



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

BJG

Docket No: 2966-99

15 October 1999

CAPT [REDACTED] USMCR

Dear Captain [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 14 October 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the reports of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB), dated 5 April and 4 May 1999, and the advisory opinions from the HQMC Reserve Retention Section, Personnel Management Branch, Reserve Affairs Division, dated 6 May and 28 July 1999, copies of which are attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the reports of the PERB. Since the Board found no defect in your performance record, they had no basis to strike your failures by the Fiscal Year (FY) 1997 and 1998 Major Selection Boards, or the FY 1999 and 2000 Reserve Major Selection Boards. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

2966-99

IN REPLY REFER TO:
1610
MMER/PERB
5 APR 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
CAPTAIN [REDACTED] USMCR

Ref: (a) Captain [REDACTED] DD Form 149 of 10 Dec 96
(b) MCO P1610.7D w/Ch 1

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 25 March 1999 to consider Captain [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 960801 to 970110 (TR) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends that when he received the report, he was ill-advised to accept it without comment since it would have no effect on his selection to the grade of Major. The petitioner also believes that since he was not the target of any investigative action, nor was he found culpable of any wrongdoing, nothing of that nature should have been included in the evaluation.

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. When the petitioner acknowledged the adverse nature of the report - - as evidenced by his signature in Item 24 - - he made a knowing and conscious decision to omit a statement in his own behalf. In so doing, he passively concurred in the appraisal and indicated he had no extenuating or mitigating circumstances which to present. For whatever reason he chose that course of action, it is he who must accept responsibility.

b. Contrary to the petitioner's assertion and arguments, there is absolutely nothing in the fitness report that is prohibited by reference (b). As a final matter, the petitioner's contention that the report is neither fair nor accurate has not been substantiated by any documentary evidence whatsoever. To this end, the Board concludes that the petitioner has failed to meet the burden of proof necessary to establish either an error or an injustice.

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
CAPTAIN [REDACTED] USMCR

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of Captain [REDACTED] official military record.

5. The case is forwarded for final action.

[REDACTED]

Colonel, U.S. Marine Corps
Deputy Director
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps



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HEADQUARTERS UNITED STATES MARINE CORPS
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QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:
1610
MMER/PERB
MAY 4 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
CAPTAIN [REDACTED] USMCR

Ref: (a) Captain [REDACTED] Form 149 of 28 Jan 99
(b) MCO P1610.7C w/Ch 1-5

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 29 April 1999 to consider Captain [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 910324 to 911020 (CH) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the report wrongly focuses on the difficulties in his private life; that those comments are inappropriate and in violation of reference (b).

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. Despite the petitioner's comment that he "accepted" the report at the time, believing that the commentary on his personal situation was appropriate, the Board is haste to point out that as a Captain with some 12 years in the Marine Corps, he should have known to avail himself of the right to respond via a statement of rebuttal. Had he done so, he could have surfaced the issues and concerns which he now raises in reference (a). At that time, his issues could have been resolved/adjudicated by the Reviewing Officer and Adverse Sighting Officer.

b. Contrary to what the petitioner may believe, the challenged fitness report does not violate any of the provisions of reference (a). The focus of the report was on the petitioner's decline in his overall performance, not his family problems. Subparagraph 5001.2f allows comments that document ". . . failure to accomplish job assignment and meet established standards; or a judgment of the Marine's inability to cope. . ." While the petitioner's problems were most unfortunate, they were nevertheless a fact that, in the opinion of the reporting officials, adversely impacted on his performance. Thus, they were valid and appropriate for inclusion in the report.

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
CAPTAIN [REDACTED] USMCR

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of Captain [REDACTED] official military record.

5. The case is forwarded for final action [REDACTED]

[REDACTED]
Colonel, U.S. Marine Corps
Deputy Director
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:
1046
RAM-6
6 May 99

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS RESERVE AFFAIRS (RA) ADVISORY OPINION ON BCNR
APPLICATION IN THE CASE OF CAPTAIN [REDACTED]
[REDACTED] SMCR

Ref: (a) MMER Request for advisory opinion of 27 Apr 99
(b) Captain [REDACTED] Form 149 of 15 Aug 97

1. Per reference (a), the following advisory opinion is provided.
2. After careful review of the references, Reserve Affairs Division has determined that Captain [REDACTED] statement contained in reference (b), implying that the subject reporting occasion unfairly jeopardized his selection to major, is false.
3. Captain [REDACTED] verifies in section 9 of reference (b) that he was aware that the active duty major board had already met by the time the adverse fitness report was written. This Headquarters verified that the FY 97 and FY 98 active duty selection to major boards had both adjourned prior to 12 Dec 96. Captain [REDACTED] was considered and failed to be selected for promotion during both of these boards. The subject report would not have been available for his official military record until 25 Mar 97. The adverse report was not considered by either board; therefore, it could not have possibly had an impact on his not being selected to the rank of major.
4. It is the advisory opinion of Reserve Affairs Division that there are no grounds for removal of the failure of selection from Captain [REDACTED] record.
5. The point of contact concerning this matter is Major [REDACTED] at com[REDACTED] 20.

[REDACTED]
Major
U.S. Marine Corps Reserve
Head
Reserve Retention Section
Personnel Management Branch
Reserve Affairs Division
By direction of the
Commandant of the Marine Corps



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:

1040
RAM-6
28 Jul 99

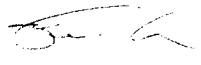
MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: ADVISORY OPINION IN THE CASE OF CAPTAIN [REDACTED]

Ref: (a) MMER/PERB Request for Advisory Opinion dtd 21 Jul 99

1. Per reference (a), the following advisory opinion is provided.
2. Even if the 24 Mar 91 - 20 Oct 91 fitness report were expunged from Captain [REDACTED]'s record, there are sufficient competitive issues remaining in his record, specifically the adverse fitness report dtd 01 Aug 96 - 10 Jan 97, that would likely result in his failure of selection on future promotion boards.

3. The point of contact is Maj [REDACTED], at [REDACTED]


[REDACTED]
Major, U.S. Marine Corps Reserve
Head, Reserve Affairs Retention
By direction of the
Commandant of the Marine Corps